REMARKS

Claims 1-64 are pending, with Claims 1, 12, 19, 24, and 45 being in independent form. Early examination and favorable consideration of the present application are requested on the basis of the following remarks.

In the Office Action dated 31 July 2003, the Examiner rejected all pending claims under 35 U.S.C. §103(a) as unpatentable over *Sinclair et al.* (US 6,554,707) in view of *Kotzin et al.* (US 6,470,180) and *Jamtgaard et al.* (US 6,430,624).

Applicant respectfully submits that *Sinclair et al.* can not be used as a prior art reference in a §103(a) rejection of the present application. All references in a 35 U.S.C. §103 rejection must qualify as prior art as defined under 35 U.S.C. §102(a)-(g). *Sinclair et al.* does not qualify as prior art under any of §102(a)-(d), and, even if *Sinclair et al.* qualified as prior art under §102(e)-(g), it can not be used against the present application because of §103(c), as will be explained fully below.

Sinclair et al. is not prior art under §102(a) because it was not "known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention" claimed in the present application. *Sinclair et al.* was neither patented nor published before the filing date of the present application. Furthermore, *Sinclair et al.* was not "known or used by others" because that clause only applies to **public** knowledge or use (*see* MPEP §2132(I): "The statutory language 'known or used by others in this country' (35 U.S.C. §102(a)) means knowledge or use **which is accessible to the public**", emphasis added).

Sinclair et al. is not prior art under §102(b) because it was not patented before the filing date of the present application. §102(c) is not applicable to *Sinclair et al.* *Sinclair et al.* is not prior art under §102(d) because §102(d) only applies to foreign patents.

Regarding the qualification of *Sinclair et al.* under any of §102(e), §102(f), or §102(g), applicants cite §103(c), which states "[s]ubject matter developed by another person, which qualifies as prior art only under subsection (e), (f), or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person".

In this case, *Sinclair et al.* was developed by another person. Furthermore, **the present application and *Sinclair et al.* were, at the time of the invention of the present application was made, owned by the Nokia Corporation.** As stated at MPEP §706.02(l)(1), the statement in the previous sentence is "sufficient evidence to disqualify [*Sinclair et al.*] from being used in a rejection under 35 U.S.C. 103(a) against the claims of [the present application]" where *Sinclair et al.* is only available as prior art under §102(e), §102(f), or §102(g). Therefore, *Sinclair et al.* is disqualified from being used in a §103(a) rejection when the only basis for *Sinclair et al.* being prior art is one of §102(e), §102(f), or §102(g).

In summary, because (i) *Sinclair et al.* does not qualify as prior art under §102(a), §102(b), §102(c), or §102(d); and (ii) *Sinclair et al.* is disqualified as prior art under any of §102(e), §102(f), and §102(g), a 103(a) rejection of the present application can not be made using *Sinclair et al.* Withdrawal of the rejection is respectfully requested.

Because the invalid §103(a) rejection was the only pending rejection of the claims in the present application, applicant respectfully requests that the pending claims be allowed.

Respectfully submitted,

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